

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1630 of 1995
and
CIVIL APPLICATION NO.2723 OF 1995
in
FIRST APPEAL No 1630 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JASODAGIRTI SOHANGIRI

Versus

POPATLAL J MAJITHIA

Appearance:

MR SATHYAN THAKKAR for MR KS NANAVATI for appellant
MR AM MEHTA for Respondents Nos.1 & 2
MR HL JANI, ld.AGP for respondent 3.

CORAM : MR.JUSTICE M.R.CALLA
Date of decision: 28/01/2000

COMMON ORAL JUDGEMENT

This First Appeal is directed against the order dated 10th March 1995 passed by the Second Extra Assistant Judge, at Jamnagar, in Civil Misc. Appeal No.9 of 1993 and Civil Misc.Application no.80 of 1992 whereby the Civil Misc. Appeal and the Civil Misc. Application have been rejected.

2. The present appeal has been filed on behalf of Jasodagiri Sohangiri. The disputes relates to a Trust in the name of Santoshi Mataji Mandir at Jamnagar. In the year 1983, an application was filed by respondents nos.1 and 2 herein before the Assistant Charity Commissioner, seeking registration of the Trust under Section 18 of the Bombay Public Trusts Act. The Assistant Charity Commissioner registered the Trust and accordingly the name of Jasodagiri Sohangiri was entered as Pujari Jasodagiri and Managing Trustee and the respondents nos.1 and 2 were entered as Trustees of the said Trust. Against this order passed by the Assistant Charity Commissioner, the present appellant had preferred a revision application before the Joint Charity Commissioner challenging that the said Trust had been wrongly registered as a Public Trust and that in fact it was his own private Trust. The Joint Charity Commissioner remanded the matter on several issues to the Assistant Charity Commissioner. In the remanded proceedings, the Assistant Charity Commissioner held that the present appellant was a Pujari and Managing Trustee. Against this order passed by the Assistant Charity Commissioner in the remanded proceedings, an appeal was preferred before the Joint Charity Commissioner by the respondents nos.1 and 2 herein. The Joint Charity Commissioner allowed the appeal and declared that the present appellant, namely, Jasodagiri Sohangiri was a Pujari and not a Managing Trustee. Thus, the status of Managing Trustee was not found to be in favour of the present appellant by the Joint Charity Commissioner and therefore, he preferred an appeal before the Assistant Judge, at Jamnagar. The Assistant Judge, at Jamnagar, by his impugned order has upheld the order as has been passed by the Joint Charity Commissioner. Therefore, aggrieved from the order passed by the Assistant Judge in Civil Misc. Appeal No.9 of 1993 and Civil Misc. Application No.80 of 1992 dismissing the same on 10th March 1995 read with the order which had been passed by the Joint Charity Commissioner, the present appeal has been preferred.

3. At the very threshold, Mr.A.M.Mehta, appearing for the respondents nos.1 and 2 raised a preliminary

objection that this appeal was not competent as the same has been filed on the basis of the Vakalat Nama signed by one Shri Hariharanand Guru Shantanand as a Power of Attorney. The Assistant Govt. Pleader Mr.H.L.Jani appearing on behalf of the respondent no.3 has supported this preliminary objection raised by Mr.Mehta. The objection is that the appellant being a Pujari had no right to delegate his functions in favour of Shri Hariharanand either with regard to filing of the present appeal against the order passed by the Assistant Judge upholding the order of the Joint Charity Commissioner or for any other purpose relating to the affairs of the Trust. It has been submitted that no Pujari in a Temple Trust can delegate his powers to anyone and therefore, the delegation of powers by the appellant in favour of Shri Hariharanand so as to file this appeal was void at the very inception and this appeal is not competent. To substantiate this objection, while referring to the record of the Second Assistant Judge, at Jamnagar, in Civil Misc. Appeal No.9 of 1993 which is available with the Record and Proceedings before this Court, Mr.Mehta made reference to the xerox copy of the Power of Attorney available at page no.107 of this record of Civil Misc. Appeal No.9 of 1993 of Second Assistant Judge, at Jamnagar, and reading of this Power of Attorney makes it very clear that the appellant Jasodagiri Sohangiri has delegated all his functions to Shri Hariharanand including that of Pujari in the Temple and all other functions which he could discharge as a Trustee. It may be quoted from this Power of Attorney as under:

"....Hun Sadhu Sanyasi chhun, ane mare awar nawar dharmik karyo mate bahar javu padtu hoy, tatha mari samadhi awastha hovathi, ane teva dharmik karya sabab Jamnagarman aavel Shri Santoshi Matajini jagyani seva puja karva tatha mara vati je je karya hun mandirman jaathe hajar rahi kari shaku chhun, teva tamam karya karva mara aa kul mukhthyarne kul satha ane adhikar aapun chhun. Aa Mandirne lakhtu tamam vahivati, dhaaraakiya, aarthik sampurna karya maara vati karva kul satha aapun chhu. Mandirni seva puja karva, aavak jaavakno hissab rakhva, themaj aavak jaavakni rakam levaa, devaa, pahonch devaa, levaa, mathlab ke maraa managing trustee tharike hun je karya karun chhun, te tamam karva sathaa aapun chhun."

This clearly shows that all the powers have been delegated in favour of Shri Hariharanand and as the Vakalat Nama filed in this appeal shows that Shri Hariharanand has signed the Vakalat Nama on the basis of

this Power of Attorney. The objection is that in fact, according to law, Shri Hariharanand could not derive any power whatsoever on the basis of this Power of Attorney so as to file this appeal and the very delegation of the powers by the appellant as Pujari or Managing Trustee of the Trust in question is ab-initio void and therefore, the appeal filed on the basis of the Vakalat Nama signed by Shri Hariharanand is not maintainable. In support of his argument, Mr.Mehta has placed reliance on a decision of the Full Bench of this Court in the case of Atmaram v. Gulamhusein, reported in 13 GLR 828 based on the Supreme Court decision in the case of Abdul Kayam v. Alibhui, reported in AIR 1963 SC 309. In this Full Bench decision, after quoting from the Supreme Court decision in the case of Abdul Kayam (supra), this Court has held that the observations made by the Supreme Court clearly show that whether the Trust is a private Trust governed by the Indian Trusts Act or is a public charitable Trust, a Trustee cannot delegate any of his duties, functions and powers to a co-trustee or to any other person unless the instrument of Trust so provides or the delegation is necessary or the beneficiaries competent to contract consent to the delegation or the delegation is in the regular course of business. Except the aforesaid four exceptional cases in which the delegation is permissible and save in these exceptional cases, the Trustees cannot, even by a unanimous resolution, authorise one of themselves to act as Managing Trustee for executing the duties, functions and powers relating to the Trust and everyone of them must join in the execution of such duties, functions and powers. On the authority of this Full Bench decision, Mr.Mehta has argued that as the delegation itself is bad in the eye of law, this appeal must be dismissed on this preliminary ground alone.

4. Mr.Sathyan Thakkar has submitted that in the facts of this case, the delegation had become necessary because the appellant claims to be a Sadhu Sanyasi and had been moving about even out of Jamnagar and he has submitted that in the instant case, the delegation is covered by one of the exceptions as has been referred to in the judgment of the Full Bench.

5. Mr.Thakkar has argued that whereas the rejoinder has been filed by Jasodagiri Sohangiri, the defect should be treated as rectified. This is no answer to the preliminary objection raised by Mr.Mehta. The objection goes to the root of the matter and once it is found that the delegation itself is bad, there is no question of rectification merely because a rejoinder has been filed by the appellant.

6. I have considered the submissions made in this regard. First of all, I called upon Mr.Sathyan Thakkar to point out as to whether there is any such condition in the instrument of the Trust itself so as to authorise him to delegate powers, but Mr.Thakkar failed to point out any such condition contained in the instrument of the Trust itself. So far as the fact that the delegation had become necessary, the only reason which has been pointed out is that the appellant had to move out and that he was a Sadhu Sanyasi. If such a reason is to prevail then it has to be considered that if a person has become a Sanyasi, he stands to renounce the whole world and nothing remains with him for the purpose of delegation. Merely because one has to move out of town where the Temple is situated does not in fact necessitate for the purpose of delegation of all the powers as has been done in the instant case. In any case, for the purpose of filing this appeal, at least there was no question of authorising said Shri Hariharanand. Even if a person has to file an appeal and has to move about, he himself has to sign the Vakalat Nama and it is not permissible in view of the observations as had been held in the Full Bench decision rendered by this Court that the delegation of the powers of the Trustee in favour of Shri Hariharanand by the present appellant was lawful. The authority derived on the basis of such a Power of Attorney vitiates the whole edifice and the basis of this appeal and I find that the preliminary objection as has been raised by Mr.Mehta has force and the same deserves to be sustained and the same is hereby sustained.

7. Since the preliminary objection as raised by Mr.Mehta succeeds, it is not at all necessary for this Court to go into the merits of the impugned order and this appeal cannot be entertained. The same is hereby dismissed. Notice is hereby discharged. The Record and Proceedings be returned forthwith. In the facts and circumstances of this case, the parties are left to bear their own costs.

8. Since the main appeal has been decided, the Civil Application for stay does not survive and the same is hereby dismissed. Notice is hereby discharged.

Sreeram.